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Appeal to the Conscience of the Practicing Bar

Joseph O'Meara Jr.

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mon. There will not be unity of time or unity of title, because the husband's interests arises by virtue of his grantor's conveyance, and the wife's interest by virtue of her grantor's conveyance to her, but if they receive title by the same deed, and section 5265 of the N. D. Comp. Laws Ann. (1913), prevents their receiving a joint tenancy, they cannot convey a joint tenancy to themselves, for the same reasons that an individual cannot convey to himself.

2. If the homestead is in the husband's name, he cannot convey to himself and wife as joint tenants, because unity of time and interest will be lacking. See: N. D. Comp. Laws Ann. (1913) § 5262 quoted above. The unity will be lacking because he gets his title through the conveyance to him by his grantor. She gets her interest by virtue of the homestead statute and her husband's conveyance to her, which must of necessity be subsequent. The grant by the husband to himself and wife does not operate to vest any interest in him. It does, however, under some of the above holdings operate to pass some estate to her, although not the one intended.

3. What has been said under "2" above is equally true where the property is not a homestead. It is the writer's opinion that being or not being a homestead is immaterial to the problem here involved, particularly since the homestead laws of this state treat husband and wife alike.

Is it necessary to convey to a third party and have them convey back to husband and wife, to achieve the desired result in the above mentioned situations? Husband and wife can convey to each other. It is questionable whether either can convey to himself or herself, or whether both together can convey to themselves. While the weight of authority, at least numerically speaking, permits direct conveyancing, there is strong authority to the contrary. Oregon, Tennessee, Illinois, Michigan and Wisconsin, perhaps others, do not permit the intention of the grantor in such case to prevail. North Dakota has not the benefit of a statute authorizing such direct conveyancing. It seems to the writer that the only safe way is to convey through a third party until the North Dakota court passes upon the proposition, or until the legislature authorizes a man to convey to himself or to himself and another jointly.

CYRUS N. LYCHE,
Third Year Law Student.

APPEAL TO THE CONSCIENCE OF THE PRACTICING BAR

The impact of the war will inevitably produce vast and profound, if not revolutionary changes in our economic and political arrangements, putting in jeopardy our democratic way of life. The ominous shadow of these changes that press upon us, due to the ascendancy of Force in so large a part of the world, gives rise to the question: What can we do about it? More particularly: What can the lawyer, as a lawyer, do about it? That leads to the deeper question of the role of Law in the successful functioning

of the democratic process. For if democratic institutions and procedures are to survive the increasing pressures of this new and changing world, they must meet the pragmatic test—they must do the job.

Democracy is possible only to the extent that people are willing to play the game according to the rules, without resort to violence to settle their disputes. That presupposes an abiding faith in the justice and efficacy of peaceful methods of adjustment. The final arbiter is a verdict expressed at the polls. But in their bearing on concrete individuals in actual circumstances, disputes of every kind, great and small, are resolved, in last analysis, by the courts of the land.

How well are they doing the job? It is time to inquire. It is time, at this critical juncture, for a continuous, searching scrutiny of the actual, day-to-day operation of the judicial process. It is time, too, for an examination of conscience by the practicing bar; for lawyers representing clients—and their professional attitudes, inclinations and methods—are inseparably a part of the judicial process. And this points the way for the lawyer's contribution—for the contribution of the lawyer as a lawyer—now and in the troubled times ahead.

Are there better ways of choosing judges?

Meantime, and under whatever system of selection, judicial functions must be so organized and coordinated as to bring judicial energies to bear with maximum effectiveness. How can this best be accomplished? How far can it be accomplished by exercise of the rule-making power without injury to the democratic values and processes it is our purpose to conserve?

In particular it is urgently required to revise, and, indeed, to repudiate and cast off our complacent acceptance of the phoney justice ground out by so many so-called minor courts. Because they deal with small sums and petty offenses, these courts are widely supposed not to matter much. In point of fact, their extensive and intimate contact with great numbers of people, for whom they symbolize the Law, gives them a paramount importance.

Here, then, is the lawyer's opportunity—to bring to bear on these problems his special competence and all his ingenuity. It is more than an opportunity; it is a professional duty—an obligation made even more urgent by the mad course of events. For if faith in orderly procedures is to live through the ordeals confronting us, the results of those procedures must square with justice expectations.

Much has been accomplished in the recent past. Means and measures for further progress are at hand, waiting to be availed of. Many of these are included in the program adopted by the House of Delegates of the American Bar Association in 1938. What is required is a wider, keener appreciation of the urgency of the case; a better understanding by more lawyers of the proposals that have been advanced to meet the necessities of the situation,

and of the experience with those proposals where they have been tried; and, more than all, the will to meet the issue.

To that end, in every state and city, the organized bar should sponsor organized study and discussion of the actual workings of the Law, of the causes of popular dissatisfaction, of the possibilities of improvement; and so activate the profession, arouse it to a full sense of its responsibilities and spur it on to do what must be done. Not sometime, now; for the sands run out.

As the Chief Justice has recently admonished: "You can not maintain democratic institutions by mere forms of words, or by occasional patriotic vows. You maintain them by making the institutions of our Republic work as they are intended to work. Here lies your responsibility with respect to this sphere of democratic action in translating the law of the land into the decision of particular controversies so that every citizen may be assured of equal justice according to law."

By JOSEPH O'MEARA, JR.*

Journal of the American Judicature Society.

*Of the Cincinnati Bar.

OUR SUPREME COURT HOLDS

In William Martin, Pltff. and Respt., vs. F. L. Anders, Receiver of the Lucky Strike Coal Company, a Corporation, Deft. and Applt. Henry Hecht, Pltff. and Respt., vs. F. L. Anders, Receiver of the Lucky Strike Coal Company, a Corporation, Deft. and Applt.

That a judgment which has been entered against a defendant who has had no opportunity to present his case on the merits, will be set aside. (Martin v. Anders.)

That the evidence is examined and it is held: the finding of fact of the trial court that plaintiff had received no payment on account of wages earned while working for the defendant is contrary to the evidence. Evidence shows that plaintiff received \$145.50 on account of such wages and defendant should have been allowed credit in that amount upon the \$199.50 which was found to be the total amount earned by the plaintiff. The judgment is modified accordingly. (Hecht v. Anders.)

Appeal from the District Court of Mercer County, Hon. H. L. Berry, Judge.

Opinion of the Court by Burke, J.

Martin v. Anders, REVERSED.

Hecht v. Anders, MODIFIED AND AFFIRMED.

In E. Delafield Smith, Pltff. and Applt., v. Victor Hanson, et al, Defts. and Respts.

That a statement in a return on an execution that the reason for returning the same wholly unsatisfied is that the property levied upon was mortgaged and that the judgment creditor failed on demand to furnish security or bond for the sale of such property, does not estop the officer who made the return, under proper pleading, from showing in addition to the ground stated in the return for returning the execution unsatisfied (1) that the judgment creditor failed to advance moneys required to pay the cost of printing the notice of execution sale, upon the demand of the officer that such moneys be advanced; and, or, (2) that the judgment creditor directed the officer to abandon the levy and not advertise or sell the property levied upon.

That in absence of statute providing to the contrary, a judgment creditor at whose instance an execution is issued is entitled to exercise a considerable